

**FILED**

JAN 14 2008

JUDGE MATTHEW F. KENNELLY  
UNITED STATES DISTRICT COURTIN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**RECEIVED**

JAN 14 2008

AVCO CORPORATION, a Delaware  
corporation,

Plaintiff,

v.

APS AVIATION, LLC, a Michigan limited  
liability company, and DANIEL WIRT,

Defendants.

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT.

Case No.

**AVCO CORPORATION'S MOTION  
FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Plaintiff, AVCO CORPORATION ("Avco"), by and through its attorneys, Eric R. Lifvendahl, Thomas C. Koessl and Jordon S. Steinway of WILLIAMS MONTGOMERY & JOHN LTD., hereby moves this Court, pursuant to Fed.R.Civ.P. 65(a) and (b), for the issuance of a Temporary Restraining Order and a Preliminary Injunction. In support, Avco states as follows:

1. On January 24, 2006, Defendant Daniel Wirt ("Wirt") was piloting an Airplane owned by Defendant APS Aviation, LLC ("APS") when it allegedly experienced a loss of engine power and was forced to land in Jackson, Michigan.

2. Wirt is alleged to have suffered injuries in the January 24, 2006 accident.

3. Avco operates a division called Lycoming Engines. Avco's Lycoming Engines division is a manufacturer of reciprocating aircraft engines, one of which engines is the subject matter of this dispute.

4. APS, Wirt and/or one of their representatives have stated their intention to investigate the alleged cause(s) of the accident by conducting a tear-down of the airplane engine.

Thereafter, Wirt will likely to file suit against Avco and other potential manufacturer defendants on a product liability/negligence theory.

5. Wirt intends to conduct the engine tear-down inspection (*i.e.*, destructive testing of the Engine), on January 15, 2008, and he will not allow Avco to perform any functional, non-destructive testing on the engine prior to such date.

6. In order for Avco to properly defend against Wirt's forthcoming product liability lawsuit, it must perform non-destructive functional testing of the pertinent engine and its related components.

7. Wirt's proposed tear-down inspection would destroy probative evidence of the current condition of the engine and carburetor, would constitute spoliation of evidence, and would unfairly and irreparably prejudice Avco and any other product manufacturer or maintenance facility that may be named as a defendant in any future lawsuit by Wirt. Functionally testing the engine, components and accessories, will yield the most probative evidence of their current operating condition and identification of any condition that affects their current ability to function properly.

8. For the reasons more fully set forth in the Verified Complaint, Brief In Support of this Motion and the exhibits attached thereto, immediate, irreparable injury, loss and damage will result to Avco if injunctive relief is not provided.

### **CONCLUSION**

WHEREFORE, Plaintiff AVCO CORPORATION respectfully requests that this Court enter an order as follows:

- A. Prohibiting Wirt and/or APS and/or anyone else acting on their behalf or at their direction from going forward with the a tear-down of the Engine and its components;

- B. Permitting Avco and other interested parties and their representatives, including Wirt and his counsel, to conduct a complete, non-destructive functional testing of the Engine and related components at a date and time upon which all interested parties can agree;
- C. Permitting Avco to perform any agreed-upon functional testing before Wirt is permitted to conduct the tear-down of the Engine and its component parts. To the extent the parties are unable to agree on the subject of what functional testing is possible and appropriate for the Engine and its component parts in their present condition, this Court's order should provide that the parties may bring this matter to this Court for a decision prior to any tear-down or destructive testing of the Engine and its component parts; and
- D. Granting any other relief as necessary and appropriate under the circumstances.

Respectfully Submitted,

AVCO CORPORATION

By: s/ Edward R. Moor  
One of its attorneys

Thomas H. Neuckranz, ARDC #: 2039206  
Edward R. Moor, ARDC #: 6205169  
Thomas C. Koessl, ARDC #: 6239337  
Jordon S. Steinway, ARDC#: 6284065  
WILLIAMS MONTGOMERY & JOHN LTD.  
20 North Wacker Drive, Suite 2100  
Chicago, Illinois 60606  
Phone: 312.443.3200  
Fax: 312.630.8500